

## Subpart F—Hearings

### § 821.37 Notice of hearing.

(a) *Notice.* The chief law judge (or his or her law judge delegate) or the law judge to whom the case is assigned shall set a reasonable date, time and place for the hearing. The notice of the hearing shall be served at least 30 days in advance thereof, and shall include notice of the nature of the hearing. The law judge may set the hearing fewer than 30 days after the notice of hearing is served if the parties agree to an earlier hearing date. In setting the hearing date, due regard shall be given to any need for discovery. In setting the place of the hearing, due regard shall be given to the convenience of the parties and to conservation of Board funds. The location of the witnesses and the suitability of a site served by a scheduled air carrier are added factors to be considered in setting the hearing location, as is Board policy that foreign-held hearings are appropriate only in the most extraordinary circumstances.

(b) *Hearings in several sessions.* Where appropriate, the law judge may determine that a hearing will be held in one or more sessions at the same or different places.

[40 FR 30243, July 17, 1975, as amended at 49 FR 28250, July 11, 1984, 59 FR 59048, Nov. 15, 1994]

### § 821.38 Evidence.

(a) Every party shall have the right to present a case-in-chief or defense by oral or documentary evidence, to submit evidence in rebuttal, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Hearsay evidence (including hearsay within hearsay where there are acceptable circumstantial indicia of trustworthiness) is admissible.

(b) All material and relevant evidence should be admitted, but a law judge may exclude unduly repetitious evidence pursuant to 5 U.S.C. 556(d) (Administrative Procedure). Any evidence that is offered and excluded may be described (via an “offer of proof”),

and that description should be made a part of the record.

[59 FR 59048, Nov. 15, 1994, as amended at 65 FR 42639, July 11, 2000]

### § 821.39 Argument and submissions.

At the hearing, the law judge shall give the parties adequate opportunity for the presentation of arguments in support of, or in opposition to, motions, objections, and rulings. Prior to the initial decision, the parties shall be afforded a reasonable opportunity to submit for consideration proposed findings and conclusions and supporting reasons therefor.

### § 821.40 Record.

The transcript of testimony and exhibits, together with all papers, requests, and rulings filed in the proceeding shall constitute the exclusive record of the proceeding. The record shall also include any proceeding upon an affidavit of personal bias or disqualification of a law judge. Copies of the transcript may be obtained by any party upon payment of the reasonable cost thereof. A copy may be examined at the National Transportation Safety Board Public Reference Room No. 806D, at 800 Independence Avenue, SW., Washington, DC 20594.

### § 821.41 Certification to the Board.

At any time prior to the close of the hearing, the Board may direct the law judge to certify any question or the entire record in the proceeding to the Board for decision, except an interlocutory ruling. In cases where the record is certified to the Board, the law judge shall not render an initial decision but shall only recommend to the Board a decision as provided in 5 U.S.C. 557 (Administrative Procedure).

## Subpart G—Initial Decision

### § 821.42 Initial decision by law judge.

(a) *Written or oral decision.* The law judge may render his or her initial decision orally at the close of the hearing, or he or she may render such decision in writing at a later date, except as provided in § 821.56(b).

(b) *Contents.* The initial decision shall include a statement of findings